

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Homayra Medero; Freddie José Zayas; Conjugal Partnership
Medero-Zayas

(b) County of Residence of First Listed Plaintiff Puerto Rico
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

William Melendez & Miguel Cuadros, 410 Park Ave, 15th Floor, Suite #
1223, New York, NY 10022 (718)725-7387

DEFENDANTS

John Roman; Jennifer Vargas; Officer López; Lt. Santiago; Officer Cruz;
Lieutenant Bernabe; José Pérez Falcón; Migdalia Santiago Torres;
Officer González; Daisy Rosario; José Figueroa Sancha

County of Residence of First Listed Defendant Puerto Rico
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983, 42 U.S.C. § 1985; 4th, 5th, 8th, 14th Amendments US Constitution

Brief description of cause:

Abuse of process, abuse of power, illegal seizure, due process

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**
3,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

02/24/2011

/s/William E. Melendez

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

CATEGORY SHEET

You must accompany your complaint with this Category Sheet, and the Civil Cover Sheet (JS-44).

Attorney Name (Last, First, MI):
USDC-PR Bar Number:
Email Address:

1. Title (caption) of the Case (provide only the names of the first party on each side):

Plaintiff:

Defendant:

2. Indicate the category to which this case belongs:

☒ Ordinary Civil Case

☐ Social Security

☐ Banking

☐ Injunction

3. Indicate the title and number of related cases (if any).

N/A

4. Has a prior action between the same parties and based on the same claim ever been filed before this Court?

☒ Yes

☐ No

5. Is this case required to be heard and determined by a district court of three judges pursuant to 28 U.S.C. § 2284?

☐ Yes

☒ No

6. Does this case question the constitutionality of a state statute? (See, Fed.R.Civ. P. 24)

☐ Yes

☒ No

Date Submitted:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Homayra Medero;
Freddie José Zayas;
Conjugal Partnership Medero-Zayas;

Plaintiffs

v.

John Roman;
Jennifer Vargas;
Officer López (first name unknown);
Lieutenant Santiago (first name unknown);
Officer Cruz (first name unknown);
Lieutenant Bernabe (first name unknown);
José Pérez Falcón;
Migdalia Santiago Torres;
Officer González (first name unknown);
Daisy Rosario;
José Figueroa Sancha;
John Doe, Richard Roe, Freddie Moe, all
of which are fictitious names
representing employees, contractors or
agents of the Puerto Rico Police
Department, whose identities are unknown
at this time

Defendants

CIVIL No. 11-_____

42 U.S.C. § 1983,
42 U.S.C. § 1985,
TORTS,
TRIAL BY JURY

COMPLAINT

TO THE HONORABLE COURT:

Now come all Plaintiffs, through the undersigned attorneys,
and respectfully allege and pray as follows:

I. INTRODUCTION

1. This is an action for assault and battery, false arrest, abuse
of power and related violations of the constitutional rights
of Plaintiffs, by defendants. The claims, filed on behalf of
Mrs. Homayra Medero, her husband Freddie José Zayas, their
conjugal partnership, and their children, arise from the acts
and omissions of defendants, when all throughout the time

period starting on September, 2008, and until the present day, they instigated unjustified criminal prosecution against plaintiffs with malice and without probable cause, and further subjected them to privacy violations. Defendants conduct in abuse of power and abuse of process, including but not limited to filing of false police reports, has led to the false arrest and incarceration of Plaintiff Medero.

2. Plaintiffs also file this action against the Bayamón Area Commanders, and Superintendents of the Puerto Rico Police Department (**P.R.-P.D.**) during all times relevant to this complaint, all of whom they allege were deliberately indifferent to their rights and caused the damages alleged, due to their failure to adequately supervise, evaluate, discipline, assign and/or monitor the police officers directly involved in the unlawful conduct causing damages to Plaintiffs. Plaintiffs also bring this action against as yet unidentified other persons, employees and agents of the P.R.-P.D., whose actions and omissions were taken in deliberate indifference to their rights and proximately caused their injuries. Plaintiffs' claims of damages are based on the violation of rights guaranteed under the Constitution and laws of the United States and Puerto Rico.
3. Co-defendants' actions deprived Plaintiffs of their due process rights, subjected them to cruel and unusual punishment, as well as to unreasonable seizures.

II. JURISDICTION

4. This action is brought pursuant to **42 U.S.C. § 1983**, as it pertains to deprivation of rights under color of state law.
5. This action is brought pursuant to **42 U.S.C. §1988**, Civil Rights Attorney's Fee Act.
6. This action is brought pursuant to the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.
7. Jurisdiction is founded upon **28 U.S.C. §§ 1331, 1343** and the aforementioned statutory provisions. Plaintiffs further invoke the supplemental jurisdiction of the Court pursuant to **28 U.S.C. § 1367** to hear and decide claims arising under the laws of Puerto Rico and any related claims which are deemed to be within respect to the pendent parties.
8. This is the proper venue to bring this action, since the cause of action arose in Puerto Rico and all parties reside in this jurisdiction.

III. PARTIES

9. Plaintiffs Hodayra Medero and Freddie José Zayas are citizens of Puerto Rico.
10. Minors identified as FJZA, YNMN, SMZM, JAZM, and JZM are the children of plaintiffs Medero and Zayas.
11. Named defendants were at all times relevant to this complaint police officers of the Commonwealth of Puerto Rico Police Department (P.R.-P.D.) assigned to the Bayamón Area.
12. The aforementioned defendants directly caused the injuries to plaintiffs, and the violation of their civil rights, when

they unlawfully instigated criminal proceedings against Plaintiff Medero. Supervisory defendants also caused injury to plaintiffs by their actions and omissions in failing to prevent other defendants from using excessive force, and falsely prosecuting, arresting, and incarcerating Plaintiffs.

13. Defendants were at all times relevant to the complaint respectively Directors and the Area Commanders for the P.R.-P.D., and thus charged with the responsibility of supervising the actions of police officers directly interacting with Plaintiff Medero. On information and belief, these officers failed in their duty to supervise, evaluate, monitor, assign and discipline such agents, or otherwise assure that they would not represent a danger to citizens such as Plaintiffs, proximately causing the injuries alleged herein.

14. Defendants John Doe, Richard Roe, Freddie Moe were at all times relevant to this complaint employees or agents of the P.R.-P.D., charged with monitoring, supervising, evaluating, assigning, disciplining and administering or otherwise processing complaints within the complaint system of the P.R.-P.D., and failed in these duties with respect to defendants directly injuring Plaintiffs. These defendants, whose identity is unknown to the plaintiffs at this time, proximately caused the injuries alleged herein by their deliberately indifferent actions and omissions with respect to the aforementioned duties and due to their failure to adequately identify, monitor and sanction and assign these officers, whose

dangerous tendencies and behaviors led to the events complained of herein.

15. At all times relevant to this complaint, all defendants were acting under color of the law of the Commonwealth of Puerto Rico.

16. Defendants are all sued in their personal capacities.

IV. FACTUAL ALLEGATIONS

17. On or around September, 2008, plaintiff Medero became aware that her minor daughter, identified by SMZ, had come into contact with internet addresses which hosted material of sexually explicit content, generally suitable for an adult audience. Upon further investigation, Medero determined that the source of the objectionable material was another minor, identified by KF, who happens to be the stepdaughter of defendant and P.R.-P.D. officer John Roman.

18. Medero proceeded to initiate a dialogue with Roman regarding both children's behavior directly at the P.R.-P.D. station with geographical competence over her neighborhood, Bayamón Sur, and where Roman, as a member of said community, also happens to be on detail.

19. Medero's bringing the above issue to the attention of Roman caused her and her family to be repeatedly victimized by the hostility, ridicule, obscene and disparaging remarks proffered by several members of the Román-Fontán household, including not only minors, but officer Roman, as well. The above hostility escalated to the point where Plaintiffs residence

was vandalized by thrown objects, such as paint and glass bottles or containers.

20. In response, on or around November 25th, 2008, Medero filed a complaint, number 2008-7-211-15606, at the Bayamón Sur P.R.-P.D. station, with officer Jennifer Vargas, badge number 31814. No further action was taken by officer Vargas, or anyone else in the station regarding the complaint.

21. The hostile, harassing, and vandalizing conduct perpetrated by members of the Román-Fontán household against Plaintiffs continued unabated. Due to the P.R.-P.D.'s inaction regarding her initial complaint, on or around January, 2009, Medero filed a second complaint at the Bayamón Sur P.R.-P.D. station, with officer López, badge number 29737. No further action was taken by officer López, or anyone else in the station regarding the complaint.

22. The above conduct victimizing Plaintiffs continued to escalate indefinitely. Medero followed through by filing yet another complaint at the Bayamón Sur station, which she submitted this time in writing, and handed over to an officer of higher rank, Lieutenant Santiago. Although Medero requested a copy of said written complaint, her request was denied by Santiago. No further action was taken by Lieutenant Santiago, or anyone else in the station regarding the complaint.

23. On or around January 15th, 2009, starting around noon, and uninterrupted all throughout the afternoon until around 6:00 PM, YMMN, received insulting and threatening messages on her

cell phone. YMMN later determined that the source of the offending messages came from a cell phone in possession of LF, another minor member of the Román-Fontán household.

24. Medero, highly distressed, called the Bayamón Sur station, requesting that a patrol car be send to take her complaint regarding the incident. As no patrol car was forthcoming, Medero repeatedly call back the station, to no avail. After the course of several hours, a patrol car did finally show up. However, instead of interviewing and taking Medero's complaint, the arriving officer - Officer Cruz, badge number 31626 - stopped instead by the Román-Fontán residence, and took a complaint - number 2009-7-211-2408 - against the victim of the incident, YMMN, as opposed to against the offending party, LF.

25. Not until he was challenged by Medero as to how was it possible for LF, as the offending party, to end up as the complainant, did Officer Cruz issue a second cross-complaint - number 2009-7-211-2406 - between YMMN and LF. No further action was taken by Officer Cruz, or anyone else in the station regarding the complaint.

26. Medero escalated the issue to Lieutenant Bernabe. Lieutenant Bernabe's only contribution consisted in re-assigning the case to Officer José Pérez Falcón, badge number 22175. No further action was taken by Officer José Pérez Falcón, or anyone else in the station regarding the complaint.

27. Medero continued to diligently follow up with the above Officers, to no avail, while she and her family continued to be repeatedly victimized by the hostility, ridicule, obscene and disparaging remarks proffered by several members of the Román-Fontán household, which by that time had escalated to include dead threats and threats of other violent acts.
28. Medero filed yet another complaint, this time with Officer López, who had previously taken an earlier complaint based on the same pattern of conduct.
29. On February 16th, 2009, Medero sought and obtained a protective order against the Román-Fontán clan, from Judge Rafael Villafañe, number LA-2009-146. The parties appeared before the court on July 22nd, 2009. Officer Cruz appeared supposedly as a charge witness against LF, but surprisingly recanted his testimony and the documentary evidence he carried with him at the hearing, and proffered testimony which in fact portrayed YMNМ as the charged party, and LF as the victim.
30. As Medero exited the court room to secure counsel for YMNМ, and YMNМ followed behind her, court marshal Migdalia Santiago Torres, LF and her mother, Ana Fontán, assaulted and physically restrained YMNМ. As Medero tried to free YMNМ from such restraint, both YMNМ and Medero were handcuffed, placed under arrest, and sent to separate withholding cells. Migdalia Santiago Torres then falsely filed formal assault and criminal contempt charges against Medero, for which she was incarcerated for nine (9) days at a correctional facility.

31. On September 11th, 2009, Officer González, from the Bayamón Norte station, served on Medero, through her husband, a summons to appear in court to face assault charges against Migdalia Santiago Torres on September 15th, 2009. The charge witness against Medero was Officer Daisy Rosario, badge number 32574, who was not present the day on which the alleged assault occurred, July 22nd, 2009.

V. FIRST CAUSE OF ACTION

32. Plaintiffs repeat and reallege each and every preceding paragraph of this complaint.

33. The actions and omissions described herein constitute an illegal seizure of a person, an excessive use of force, false arrest, a violation of due process, and cruel and unusual punishment, in violation of the United States Constitution and actionable pursuant to **42 U.S.C. § 1983**.

34. Defendants respond jointly and severally to the plaintiffs for these violations, entitling plaintiffs to an award of compensatory damages, costs, interests and attorney fees.

35. Given the wanton and malicious actions and omissions as described herein, the plaintiffs are entitled to an award of punitive or exemplary damages.

VI. SECOND CAUSE OF ACTION

36. Plaintiffs repeat and reallege each and every preceding paragraph of this complaint.

37. The actions and omissions described herein constitute a tort under the Constitution and laws of the Commonwealth of Puerto

Rico, for which the defendants respond to the plaintiffs in compensatory damages, pursuant to **Article 1802 of the Civil Code of Puerto Rico**. This Court has supplemental jurisdiction to hear and adjudicate these claims arising from the same nucleus of operative facts, and to hear and adjudicate any such claim this court may deem to be brought on behalf of a pendent party to this action.

VII. THIRD CAUSE OF ACTION

38. Plaintiffs repeat and reallege each and every preceding paragraph of this complaint.

39. The actions and omissions described herein constitute obstruction of justice, and are actionable pursuant to **42 U.S.C. § 1985**.

IX. JURY DEMAND

40. Plaintiffs demand trial by jury.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief, jointly and severally, against all defendants:

41. That this court determine that the actions by all defendants were in violation of the Constitution and laws of the United States and of Puerto Rico;

42. That the court award plaintiffs compensatory damages and punitive damages in excess of \$3,000,000.00, which request for compensation is made up of the following amounts:

- a) \$1,000,000.00 in compensatory damages for the harm done to Homayra Medero in violation of her constitutional rights;
- b) \$1,000,000.00 in compensatory damages for the harm done to Freddie José Zayas, the Conjugal Partnership Medero-Zayas, due to the actions taken against their wife, and compensation for physical and emotional suffering;
- c) Punitive damages in excess of \$1,000,000.00 due to the malicious and wanton nature of the violations alleged herein.

43. That plaintiffs be provided with the costs of this action, as well as statutory attorneys' fees and litigation expenses;
44. That the court provide for payment of all applicable interests, including prejudgment interest if indicated;
45. That plaintiffs be granted such other and further relief as the Court may deem appropriate and proper and retain jurisdiction over this action in order to assure full compliance with any decree issued by this court.

Submitted in New York, New York, this 24th day of February, 2011.

<u>S/William E. Meléndez Menéndez</u> William E. Meléndez Menéndez USDC PR No. 226902 Attorney for Plaintiffs 415 Park Avenue 15 th Floor, Suite # 1233 New York, New York 10022 Tel. (718) 725-7387 We.Melendez@e-Lex.us	<u>S/Miguel A. Cuadros Pesquera</u> Miguel A. Cuadros Pesquera USDC PR No. 114814 Attorney for Plaintiffs 701 Ponce de León Avenue Suite # 215 San Juan, Puerto Rico 00907 Tel. (787) 725-2652; (787) 722-5347 macuadros@cuad-law.com
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